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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,519

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Deolo Falcone

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EXAMINER

ROLAND, DANIEL F

ART UNIT

PAPER NUMBER

3764

NOTIFICATION DATE

DELIVERY MODE

05/14/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/586,519	Applicant(s) FALCONE, DEOLO	
	Examiner DANIEL F. ROLAND	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/19/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the initial Office Action based on the merits of the 10/586,519 application filed July 19, 2006. Claims 1-22 are currently pending and have been considered below.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “product in the form of a bracelet or personal accessory” in claim 19 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 13 is objected to because of the following informalities: in line 3, the word “senor” should be --sensor--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8 and 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 8 recites the limitation "the pre-established training conditions" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1-2, 6, 8, 9-16, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (US Patent 4,509,531).

Ward discloses an exercise product (Fig 1, #10) comprising:

Regarding claim 1, a temperature sensor (Fig 3, #36) to detect a body temperature of an individual and means of monitoring (Abstract), by comparing said temperature readings, variations in the body temperature of said individual as a result of said exercises.

Regarding claim 2, the product of claim 1, wherein said monitoring means include electronic processing means to process said temperature readings (Col 4, lines 49-66).

Regarding claim 6, the product of claim 1, further comprising protection means to prevent contamination of said temperature sensor by external agents (Fig 3, #30 and Col 4, lines 31-33).

Regarding claim 8, the product of claim 1, further comprising means to indicate when the individual has reached the pre-established training conditions (Abstract).

Regarding claim 10, the product of claim 1, wherein said temperature is measured at intervals (Abstract).

Regarding claim 11, the product of claim 1, further comprising control means to control the beginning and the end of a cycle of said measurements (Fig 1, #s 18, 20 and Col 4, lines 13-25).

Regarding claim 12, the product of claim 1, wherein said sensor is able to read said temperature measurements by placing a body part of said individual near or on said sensor (Col 4, lines 42-45).

Regarding claim 13, the product of claim 12, wherein said sensor is able to read said temperature measurements by placing a finger of said individual near or on said sensor (Col 4, lines 42-45). Examiner notes that a user is capable of placing a finger on the temperature sensor if desired.

Regarding claim 14, the product of claim 1, wherein said measurement readings include an initial temperature measured at the beginning of said physical activities or at the start of a measurement cycle and where said monitoring is such as to monitor a difference in temperature of said readings compared to the initial reading (Abstract).

Regarding claims 15-16, the product of claim 1, wherein said product is able to signal achievement of a correct warm-up/wind-down state of said individual when, by means of said monitoring of variations in body temperature compared to the beginning of said activities or at the start of a measurement cycle, said variation reaches an absolute value approximately within the range of 1.3 degrees C - 2.3 degrees C or wherein said range is approximately within 1.5 degrees C - 2.0 degrees C (Col 9, lines 4-14).

Regarding claim 18, the product of claim 1, wherein said product is in the form of a control console for training equipment (Fig 1). Examiner notes that the product can control itself and it can be used for training equipment, and thus, the broadly recited limitation of being "in the form of a control console for training equipment" is met.

Regarding claim 19, the product of claim 1, wherein said product is in the form of a bracelet or personal accessory (Fig 1).

Regarding claim 20, the product of claim 1, further comprising independent power supply means (Col 4, lines 49-66).

Regarding claim 21, the product of claim 1, characterized in that it comprises a product according to claim 1.

Regarding claim 22, the product of claim 21, wherein said equipment comprises at least one handle, or handgrip (Fig 3, #14), provided with a projection (Fig 3, #12) and wherein said sensor (Fig 3, #36) is placed near said projection.

Examiner notes that measuring the effectiveness and efficiency of warming-up and winding-down physical exercises performed by an individual in claim 1 is an intended use recitation and the product disclosed by Ward is capable of performing such functions.

9. Claims 1-2, 7-9, 11-14, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Barney (US Patent 4,312,358).

Barney discloses an exercise product (Fig 1, #11) comprising:

Regarding claim 1, a temperature sensor (Col 2-Col 3) to detect a body temperature of an individual and means of monitoring (Col 2-Col 3), by comparing said temperature readings, variations in the body temperature of said individual as a result of said exercises.

Regarding claim 2, the product of claim 1, wherein said monitoring means include electronic processing means to process said temperature readings (Col 2-Col 3).

Regarding claim 7, the product of claim 1, further comprising an output interface to display said temperature readings (Col 2-Col 3).

Regarding claim 8, the product of claim 1, further comprising means to indicate when the individual has reached the pre-established training conditions (Col 2-Col 3).

Regarding claim 9, the product of claim 1, wherein said temperature is measured continuously (Col 2-Col 3).

Regarding claim 11, the product of claim 1, further comprising control means to control the beginning and the end of a cycle of said measurements (Col 2-Col 3).

Regarding claim 12, the product of claim 1, wherein said sensor is able to read said temperature measurements by placing a body part of said individual near or on said sensor (Col 4).

Regarding claim 13, the product of claim 12, wherein said sensor is able to read said temperature measurements by placing a finger of said individual near or on said sensor (Col 4). Examiner notes that a user is capable of placing a finger on the temperature sensor if desired.

Regarding claim 14, the product of claim 1, wherein said measurement readings include an initial temperature measured at the beginning of said physical activities or at the start of a measurement cycle and where said monitoring is such as to monitor a difference in temperature of said readings compared to the initial reading (Col 2-Col 3).

Regarding claim 18, the product of claim 1, wherein said product is in the form of a control console for training equipment (Fig 1). Examiner notes that the product can control itself and it can be used for training equipment, and thus, the broadly recited limitation of being "in the form of a control console for training equipment" is met.

Regarding claim 19, the product of claim 1, wherein said product is in the form of a bracelet or personal accessory (Col 2-Col 3).

Regarding claim 20, the product of claim 1, further comprising independent power supply means (Col 5, lines 5-10).

Regarding claim 21, the product of claim 1, characterized in that it comprises a product according to claim 1.

Regarding claim 22, the product of claim 21, wherein said equipment comprises at least one handle, or handgrip (Fig 1), provided with a projection (Fig 1, #14) and wherein said sensor (Fig 1, #13) is placed near said projection.

Examiner notes that measuring the effectiveness and efficiency of warming-up and winding-down physical exercises performed by an individual in claim 1 is an intended use recitation and the product disclosed by Ward is capable of performing such functions.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barney (US Patent 4,312,358) in view of Gentempo et al (US Pre-Grant Publication 2002/0151817).

Barney discloses all of the limitations of claim 1, but fails to explicitly disclose wherein said temperature sensor includes a thermocouple (claim 3), or said temperature sensor is of the no-contact type (claim 4) and wherein said no-contact type sensor is an infrared sensor (claim 5).

However, Gentempo et al teaches a temperature measuring device that comprises a no-contact type sensor that is an infrared sensor or a thermocouple (Paragraph 41).

Barney and Gentempo et al are analogous art because they are from the same field of endeavor – measuring devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Barney and Gentempo et al before him or her, to modify the exercise device of Barney by substituting its temperature sensing means for the infrared temperature sensing means taught by Gentempo et al because non-contact sensors improve the reliability of temperature readings (Gentempo et al, Paragraph 41).

Therefore, it would have been obvious to combine Gentempo et al with Barney to obtain the invention as specified in the instant claims.

Regarding claim 8, Barney discloses the product of claim 1, further comprising means to indicate when the individual has reached the pre-established training conditions (Col 2-Col 3).

13. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward (US Patent 4,509,531).

Regarding claim 9, Ward discloses all of the limitations of claim 1, but fails to explicitly disclose wherein said temperature is measured continuously, however, it would have been an obvious matter of design choice to measure the temperature continuously since applicant has not

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stated that doing so is for any particular purpose, and furthermore, the device of Ward is capable of measuring the temperature continuously.

Regarding claim 17, Ward discloses all of the limitations of claim 1, but fails to explicitly disclose wherein said product is able to signal achievement of a correct warm-up/wind-down state of said individual when, by means of said monitoring of variations in body temperature compared to the beginning of said activities or at the start of a measurement cycle, said variation reaches an absolute value approximately equal to 1.7 degrees C, however, the device of Ward is capable of reaching such a range, and furthermore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to set the range at 1.7 degrees C, sine it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barney (US Patent 4,312,358).

Regarding claim 10, Barney discloses all of the limitations of claim 1, but fails to explicitly disclose wherein said temperature is measured at intervals, however, it would have been an obvious matter of design choice to measure the temperature at intervals since applicant has not stated that doing so is for any particular purpose, and furthermore, the device of Barney is capable of measuring the temperature at intervals.

15. Claim 18, *in the alternative*, is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward (US Patent 4,509,531) in view of Huang (US Patent 6,824,502).

Ward discloses all of the limitations of claim 18 as discussed above, however, in case the Applicant disagrees that Ward discloses the product in the form of a control console for training equipment the Examiner is also rejecting claim 18 over Ward in view of Huang.

Huang teaches a control console for training equipment comprising a temperature sensor (Fig 4 and Col 2).

Ward and Huang are analogous art because they are from the same field of endeavor – devices that measure temperature.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Ward and Huang before him or her, to modify the exercise device of Ward by incorporating it with the control console for training equipment in view of the teachings of Huang because all of the claimed elements are known in the art and it would yield the same predictable result of an exercise device that can detect changes in temperature of a user.

Therefore, it would have been obvious to combine Huang with Ward to obtain the invention as specified in the instant claims.

Conclusion

16. The prior art made of record is considered pertinent to applicant's disclosure. Please see from PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL F. ROLAND whose telephone number is (571)270-5029. The examiner can normally be reached on Monday - Friday (7:30-5:00) Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. F. R./
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764